

HOUSE BILL NO. 517

INTRODUCED BY WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ISSUANCE OF A MONTANA DISTILLERY LICENSE; PROVIDING THAT A LICENSE ~~MUST~~ MAY BE ISSUED TO A PERSON AUTHORIZED BY FEDERAL LAW TO DISTILL LIQUOR; PROVIDING FOR THE FUNCTIONS THAT MAY BE PERFORMED BY A MONTANA DISTILLERY; PROVIDING FOR A REDUCED TAX RATE ON LIQUOR SOLD AND DELIVERED IN THE STATE BY A COMPANY THAT MANUFACTURED, DISTILLED, RECTIFIED, BOTTLED, OR PROCESSED AND THAT SOLD NOT MORE THAN 50,000 PROOF GALLONS OF LIQUOR NATIONWIDE; PROVIDING FOR REPORTING, TAX PAYMENTS, AND PENALTIES; AMENDING SECTIONS ~~16-1-404 AND 16-4-401~~ 16-1-404, 16-4-401, AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. SECTION 1. DEFINITION DEFINITIONS. FOR THE PURPOSE OF [SECTIONS 2 AND 3], THE FOLLOWING DEFINITIONS APPLY:

(1) "MICRODISTILLERY" MEANS A DISTLLERY LOCATED IN MONTANA THAT PRODUCES 25,000 GALLONS OR LESS OF LIQUOR ANNUALLY.

(2) "~~PRODUCES~~" "PRODUCES" MEANS THE DISTILLATION OF LIQUOR ON THE PREMISES OF THE DISTILLERY LICENSEE.

NEW SECTION. Section 2. Distillery license. (1) The department ~~shall~~ MAY, upon receipt of an application, issue a distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture, distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 17% alcohol by weight for sale to the department or as provided in [section ~~2~~ 3] and may transport the liquor out of this state for sale outside this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic beverages for blending and manufacturing purposes upon terms and conditions that the department may provide. A licensee may not sell any alcoholic beverage within this state except to the department or as provided in [section ~~2~~ 3].

(2) An agricultural producer or association of agricultural producers or legal agents who manufacture and convert agricultural surpluses, by-products, or wastes into denatured ethyl and industrial alcohol for purposes other than human consumption are not required to obtain a distillery license from the department.

NEW SECTION. Section 3. Domestic distillery. (1) A distillery located in Montana and licensed pursuant to [section 4 2] may:

(a) import necessary products in bulk and;

(B) bottle, produce, blend, store, transport, or export liquor that it produces;

~~(b) sell liquor that it produces at wholesale to liquor distributors;~~

~~———— (c) sell liquor that it produces at retail at the distillery directly to the consumer for consumption on or off the premises;~~

~~———— (d) provide, without charge, liquor that it produces for consumption at the distillery;~~

~~———— (e) obtain a special event permit under 16-4-301; or~~

~~———— (B)(C) PROVIDE, WITH OR WITHOUT CHARGE, NOT MORE THAN TWO OUNCES OF LIQUOR THAT IT PRODUCES AT THE DISTILLERY TO CONSUMERS FOR CONSUMPTION ON THE PREMISES BETWEEN 10 A.M. AND 8 P.M.; OR A DISTILLERY MAY NOT SELL OR GIVE MORE THAN 2 OUNCES OF LIQUOR TO AN INDIVIDUAL DURING A BUSINESS DAY;~~

~~———— (D) SELL LIQUOR THAT IT PRODUCES AT RETAIL AT THE DISTILLERY DIRECTLY TO THE CONSUMER FOR OFF-PREMISE CONSUMPTION PROVIDED THAT THE MINIMUM RETAIL PRICE AS DETERMINED BY THE DEPARTMENT IS CHARGED;~~

~~(f)(c)(E)(C)~~ perform those operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury.

(2) (a) A distillery that is located in Montana and licensed pursuant to [section 4 2] ~~and that has an annual production of 25,000 gallons or less of liquor may~~ SHALL sell liquor to the department under this code, ~~BUT MAY NOT SELL LIQUOR IT PRODUCES AT WHOLESALE TO ALL BEVERAGES LICENSE HOLDERS AND THE DEPARTMENT SHALL INCLUDE THE DISTILLERY'S LIQUOR AS A LISTED PRODUCT.~~

(b) The distillery may use a common carrier for delivery of the liquor to ~~licensed distributors~~ THE DEPARTMENT.

(c) A distillery that ~~distributes~~ PRODUCES liquor within the state under this subsection (2) shall maintain records of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices of liquor that it ships ~~in the state, names and addresses of consignees,~~ TO THE DEPARTMENT and other

1 information that the department may determine to be necessary to ensure that distribution of liquor within this
2 state conforms to the requirements of this code.

3 (3) A MICRODISTILLERY MAY:

4 (A) PROVIDE, WITH OR WITHOUT CHARGE, NOT MORE THAN 2 OUNCES OF LIQUOR THAT IT PRODUCES AT THE
5 MICRODISTILLERY TO CONSUMERS FOR CONSUMPTION ON THE PREMISES BETWEEN 10 A.M. AND 8 P.M. A
6 MICRODISTILLERY MAY NOT SELL OR GIVE MORE THAN 2 OUNCES OF LIQUOR TO AN INDIVIDUAL FOR ON-PREMISES
7 CONSUMPTION DURING A BUSINESS DAY.

8 (B) SELL LIQUOR THAT IT PRODUCES AT RETAIL AT THE DISTILLERY DIRECTLY TO THE CONSUMER FOR
9 OFF-PREMISES CONSUMPTION IF:

10 (I) NOT MORE THAN 1 LITER A DAY IS SOLD TO AN INDIVIDUAL; AND

11 (II) THE MINIMUM RETAIL PRICE AS DETERMINED BY THE DEPARTMENT IS CHARGED.

12
13 **Section 4.** Section 16-1-404, MCA, is amended to read:

14 **"16-1-404. License tax on liquor -- amount -- distribution of proceeds.** (1) The department shall
15 collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a
16 license tax of:

17 (a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that
18 manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor
19 nationwide in the calendar year preceding imposition of the tax pursuant to this section;

20 (b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that
21 manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not
22 more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax
23 pursuant to this section;

24 (c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that
25 manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor
26 nationwide in the calendar year preceding imposition of the tax pursuant to this section.

27 (2) The license tax must be charged and collected on all liquor produced in or brought into the state and
28 taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state
29 markup as designated by the department. The license tax must be figured in the same manner as the state
30 excise tax and is in addition to the state excise tax. The department shall retain in a separate account the

1 amount of the license tax received. The department, in accordance with the provisions of 15-1-501, shall allocate
2 the revenue as follows:

3 (a) Thirty-four and one-half percent is allocated to the state general fund.

4 (b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of
5 the department of public health and human services for the treatment, rehabilitation, and prevention of
6 alcoholism and chemical dependency.

7 (3) The license tax proceeds that are allocated to the department of public health and human services
8 for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited
9 quarterly to the department of public health and human services. The legislature may appropriate a portion of
10 the license tax proceeds to support alcohol and chemical dependency programs. The remainder must be
11 distributed as provided in 53-24-206."

12
13 **Section 5.** Section 16-4-401, MCA, is amended to read:

14 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code
15 is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

16 (2) Except as provided in [section 4 2] and subsection (6) of this section, in the case of a license that
17 permits on-premises consumption, the department shall find in every case in which it makes an order for the
18 issuance of a new license or for the approval of the transfer of a license that:

19 (a) in the case of an individual applicant:

20 (i) the applicant will not possess an ownership interest in more than one establishment licensed under
21 this chapter for all-beverages sales;

22 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
23 16-1-106;

24 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
25 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

26 (iv) the applicant is a resident of the state and is qualified to vote in a state election;

27 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
28 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
29 with all applicable laws of the state and local governments; and

30 (vi) the applicant is not under 19 years of age; and

1 (b) in the case of a corporate applicant:

2 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);

3 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
4 applicant listed in subsection (2)(a);

5 (iii) each individual who has control over the operation of the license meets the requirements for an
6 individual applicant listed in subsection (2)(a);

7 (iv) each person who shares in the profits or liabilities of a license meets the requirements for an
8 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iv) does not apply to a shareholder of a
9 corporation who owns less than 10% of the outstanding stock in that corporation.

10 (v) the corporation is authorized to do business in Montana; and

11 (vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the
12 requirements of subsections (2)(a)(i) and (2)(a)(ii); and

13 (c) in the case of any other business entity as applicant:

14 (i) if the applicant consists of more than one individual, all must meet the requirements of subsection
15 (2)(a); and

16 (ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection
17 (2)(b).

18 (3) In the case of a license that permits only off-premises consumption, the department shall find in
19 every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a
20 license that:

21 (a) in the case of an individual applicant:

22 (i) the applicant will not possess an ownership interest in more than one establishment licensed under
23 this chapter for all-beverages sales;

24 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in
25 16-1-106;

26 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
27 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

28 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
29 the applicant's rights have been restored;

30 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a

business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under 19 years of age; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a); and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) ~~In~~ Subject to [section 4 2], in the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

- (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);
- (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a);
- (iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and
- (iv) the corporation is authorized to do business in Montana; and
- (c) in the case of any other business entity as applicant:
- (i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and
- (ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).
- (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.
- (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

SECTION 6. SECTION 16-4-501, MCA, IS AMENDED TO READ:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

- (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;
- (ii) for each storage depot, \$400;
- (b) (i) each beer wholesaler, \$400; each domestic winery producing more than 25,000 gallons of wine, \$400; each domestic winery producing 25,000 gallons or less of wine, \$200; each table wine distributor, \$400;
- (ii) for each subwarehouse, \$400;
- (c) each beer retailer, \$200;
- (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;
- (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in

1 conjunction with beer, \$200;

2 (e) any unit of a nationally chartered veterans' organization, \$50.

3 (2) The permit fee under 16-4-301(1) is computed at the following rate:

4 (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests,
5 other than those applied for pursuant to 16-4-301(1)(c); and

6 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the
7 provisions of 16-4-301(1)(c).

8 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale
9 of all alcoholic beverages.

10 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee
11 in the sum of \$300.

12 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment
13 to a beer-only license pursuant to 16-4-105, is \$200.

14 (6) The annual renewal fee for:

15 (a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

16 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

17 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

18 (a) except as provided in this section, for each license outside of incorporated cities and incorporated
19 towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of
20 a nationally chartered veterans' organization and \$400 for all other licensees;

21 (b) except as provided in this section, for each license in incorporated cities with a population of more
22 than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest
23 entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally
24 chartered veterans' organization and \$500 for all other licensees;

25 (c) except as provided in this section, for each license in incorporated cities with a population of more
26 than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest
27 entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally
28 chartered veterans' organization and \$650 for all other licensees;

29 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5
30 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest

boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

(10) The annual fee for a distillery is \$600.

~~(10)~~(11) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

~~(11)~~(12) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

~~(12)~~(13) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

NEW SECTION. SECTION 7. REPORTING -- TAX PAYMENT -- PENALTIES. (1) A EXCEPT AS PROVIDED IN

SUBSECTION (9), A DISTILLERY LICENSED TO DO BUSINESS IN THIS STATE UNDER [SECTION 4-2] SHALL, ON OR BEFORE THE 15TH DAY OF EACH MONTH, IN THE MANNER AND FORM PRESCRIBED BY THE DEPARTMENT, MAKE AN EXACT RETURN TO THE DEPARTMENT REPORTING THE TOTAL AMOUNT OF LIQUOR ~~MANUFACTURED IN THIS STATE THAT WAS SOLD AND DELIVERED BY~~ SAMPLES PROVIDED WITH OR WITHOUT CHARGE AT THE DISTILLERY IN THE PREVIOUS MONTH. THE DEPARTMENT MAY AT ANY TIME MAKE AN EXAMINATION OF THE DISTILLERY'S BOOKS AND OF THE PREMISES AND MAY OTHERWISE CHECK THE ACCURACY OF THE RETURN.

(2) THE ~~TAX~~ TAXES IMPOSED PURSUANT TO 16-1-401 AND 16-1-404 UPON A DISTILLERY LICENSED UNDER [SECTION 4-2] ARE DUE ON OR BEFORE THE 15TH DAY OF EACH MONTH FROM THE DISTILLER FOR LIQUOR SOLD DURING THE PREVIOUS MONTH. THE DEPARTMENT SHALL ADOPT RULES AND PROVIDE FORMS FOR THE PROPER ALLOCATION OF TAXES.

(3) IF A DISTILLER SUBJECT TO THE PAYMENT OF THE ~~TAX~~ TAXES PROVIDED FOR IN 16-1-401 AND 16-1-404 FAILS TO MAKE ANY RETURN REQUIRED BY THIS CODE OR FAILS TO MAKE PAYMENT OF THE ~~TAX~~ TAXES WITHIN THE TIME PROVIDED IN THIS PART, THE DEPARTMENT SHALL, AFTER THE TIME HAS EXPIRED, DETERMINE AND FIX THE AMOUNT OF ~~TAX~~ TAXES DUE THE STATE FROM THE DELINQUENT DISTILLER.

(4) THE DEPARTMENT SHALL THEN PROCEED TO COLLECT THE TAX WITH PENALTIES AND INTEREST. UPON REQUEST OF THE DEPARTMENT, THE ATTORNEY GENERAL SHALL PROSECUTE IN ANY COURT OF COMPETENT JURISDICTION AN ACTION TO COLLECT THE TAX.

(5) IF ALL OR PART OF THE TAX IMPOSED UPON A DISTILLERY BY THIS PART IS NOT PAID WHEN DUE, THE DEPARTMENT MAY ISSUE A WARRANT FOR DISTRAINT AS PROVIDED IN TITLE 15, CHAPTER 1, PART 7. THE RESULTING LIEN HAS PRECEDENCE OVER ANY OTHER CLAIM, LIEN, OR DEMAND FILED OR RECORDED AFTER THE WARRANT IS ISSUED.

(6) AN ACTION MAY NOT BE MAINTAINED TO ENJOIN THE COLLECTION OF THE TAX OR ANY PART OF THE TAX.

(7) ANY TAX OWED BY A DISTILLER UNDER THIS CODE THAT IS NOT PAID WITHIN THE TIME PROVIDED IS DELINQUENT, AND PENALTY AND INTEREST MUST BE ADDED TO THE DELINQUENT TAX AS PROVIDED IN 15-1-216.

(8) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (9), A DISTILLER WHO FAILS, NEGLECTS, OR REFUSES TO MAKE THE RETURN TO THE DEPARTMENT PROVIDED FOR IN THIS SECTION, REFUSES TO ALLOW THE EXAMINATIONS AS PROVIDED FOR IN THIS SECTION, OR FAILS TO MAKE AN ACCURATE RETURN IN THE MANNER PRESCRIBED IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED AN AMOUNT NOT EXCEEDING \$1,000.

(9) A DISTILLERY FOR WHICH THE TAX IS LESS THAN \$10 A MONTH FROM THE SALE OF SAMPLES IS NOT REQUIRED TO FILE A RETURN OR PAY THE TAX FOR THAT MONTH UNDER THIS SECTION.

NEW SECTION. Section 8. Codification instruction. (1) [Sections 1 ~~and 2~~ THROUGH 3] are intended to be codified as an integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [sections 1 ~~and 2~~ THROUGH 3].

(2) [SECTION 6 7] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 16, CHAPTER 1, PART 4, AND THE PROVISIONS OF TITLE 16, CHAPTER 1, PART 4, APPLY TO [SECTION 6 7].

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2005.

- END -